



Section 42(b)(1) provides that the term “applicable percentage” means, with respect to any building, the appropriate percentage prescribed by the Secretary of Treasury for the earlier of:

- (i) the month in which the building is placed in service; or
- (ii) at the election of the taxpayer (I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to the building as to the housing credit dollar amount to be allocated to the building, or (II) in the case of any building to which § 42(h)(4) applies (i.e., 50 percent or more of the aggregate basis of the land and the building is financed with tax-exempt bonds subject to the volume cap), the month in which the tax-exempt obligations are issued.

Section 42(b)(1) also provides that a month may be elected under clause (ii) only if the election is made not later than the fifth day after the close of the month. Such an election, once made, is irrevocable.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner of Internal Revenue will use to determine whether to grant an extension of time to make an election.

Section 301.9100-1(a) provides that the regulations under this section and § 301.9100-2 provide an automatic extension of time to make certain statutory elections.

Section 301.9100-1(b) defines the term “statutory election” as an election whose due date is prescribed by statute.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-2(b) grants an automatic extension of six months from the due date of a return excluding extensions to make regulatory or statutory elections whose due dates are the due date of the return or the due date of the return including extensions provided the taxpayer timely filed its return for the year the election should have been made and the taxpayer takes corrective action as defined in § 301.9100-2(c) within the six-month extension period.

The election under § 42(b)(1)(ii)(II) is a statutory election within the meaning of § 301.9100-1(b) and is not eligible for the automatic six-month extension under

§ 301.9100-2 because the due date of the election is not the due date of the return or the due date of the return including extensions.

In the instant case, based solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-2 have not been met. Accordingly, Taxpayer is not granted an extension of time to make the election under § 42(b)(1)(ii)(II) for Project.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. Specifically, we express no opinion on whether Project otherwise qualifies under § 42.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with information provided in the ruling request, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: /s/ Christopher J. Wilson  
CHRISTOPHER J. WILSON  
Senior Counsel, Branch 5  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter  
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